



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-140974-11]

RIN 1545-BK66

Definitions and Reporting Requirements for Shareholders of Passive Foreign Investment Companies.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and the Department of the Treasury (Treasury Department) are issuing temporary regulations that provide guidance on determining the ownership of a passive foreign investment company (PFIC), the annual filing requirements for shareholders of PFICs, and an exclusion from certain filing requirement for shareholders that constructively own interests in certain foreign corporations. The temporary regulations primarily affect shareholders of PFICs that do not currently file Form 8621, “Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund”, with respect to their PFIC interests. The temporary regulations also affect certain shareholders that rely on a constructive ownership exception to the requirement to file Form 5471, “Information Return of U.S. Persons with Respect to Certain Foreign Corporations.” The text of those temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations.

DATES: Comments and requests for a public hearing must be received by **INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-140974-11), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-140974-11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-140974-11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Susan E. Massey or Barbara E. Rasch, (202) 317-6934; concerning submissions of comments or requests for a public hearing, Oluwafunmilayo Taylor, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under sections 1291 and 1298 of the Internal Revenue Code (Code). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Accordingly, a regulatory assessment is not required.

It is hereby certified that the collection of information in this regulation will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that most small entities do not own an interest in a PFIC, and the fact that PFIC shareholders (including small entities) that currently report information on Form 8621, "Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund", with respect to a PFIC will not be required to file additional reports with respect to the same PFIC under these proposed regulations. Most small entities that are shareholders of a PFIC either make a qualified electing fund (QEF) election under section 1295 or make a mark to market election under section 1296 and, therefore, already file Form 8621 with respect to the PFIC stock. In addition, shareholders that are subject to section 1291 as a result of receiving a distribution from a PFIC or disposing of their interest in a PFIC are currently required to file Form 8621. Thus, there is a limited class of PFIC shareholders that will be required to file Form 8621 under these regulations that are not currently required to do so. Accordingly, the collection of information required by these proposed regulations does not affect a substantial number of small entities.

Further, the collection of information required under these proposed regulations does not have a significant economic impact because neither the time nor the costs necessary for shareholders to comply with the collection of information requirements is

significant. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the IRS as prescribed in this preamble under the “Addresses” heading. The IRS and the Treasury Department request comments on all aspects of the proposed rules.

In addition, the IRS and the Treasury Department request comments on whether, for ease of administration, the section 1291(d)(2) deemed dividend and deemed sale elections should be available at the domestic partnership level. In particular, the IRS and the Treasury Department request comments on how the election can be effectuated in a manner consistent with the PFIC regimes and Subchapter K of chapter 1 of the Code. The IRS and the Treasury Department also request comments on the determination of proportionate ownership by a beneficiary of PFIC stock held through a domestic or foreign estate or nongrantor trust.

All comments will be available for public inspection and copying at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits electronic or written comments. If a public

hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Susan E. Massey and Barbara E. Rasch of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805* * *

* Sections 1.1291-1 and 1.1291-9 also issued under 26 U.S.C. 1298(a) and (g) * *

Section 1.1298-1 also issued under 26 U.S.C. 1298(f) * * *

Section 1.6038-2 also issued under 26 U.S.C. 6038(d) * * *

Section 1.6046-1 also issued under 26 U.S.C. 6046(b) * * *

Par. 2. Section 1.1291-0 is amended by adding a listing of the paragraph headings for §§1.1291-1 and 1.1291-9 as follows:

§1.1291-0 Passive foreign investment companies -- table of contents.

[The text of the proposed amendments to §1.1291-0 is the same as the text of §1.1291-0T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.1291-1 is amended by revising the section heading and adding paragraphs (b)(2)(ii), (b)(2)(v), (b)(7), (b)(8), and (k) as follows:

§1.1291-1 Taxation of United States persons that are shareholders of section 1291 funds.

(a) through (b)(2)(i) [Reserved].

(b)(2)(ii) [The text of the proposed amendments to §1.1291-1(b)(2)(ii) is the same as the text of §1.1291-1T(b)(2)(ii) published elsewhere in this issue of the **Federal Register**].

(b)(2)(iii) and (iv) [Reserved].

(v) [The text of the proposed amendments to §1.1291-1(b)(2)(v) is the same as the text of §1.1291-1T(b)(2)(v) published elsewhere in this issue of the **Federal Register**].

(3) through (6) [Reserved].

(7) [The text of the proposed amendments to §1.1291-1(b)(7) is the same as the text of §1.1291-1T(b)(7) published elsewhere in this issue of the **Federal Register**].

(8) [The text of the proposed amendments to §1.1291-1(b)(8) is the same as the text of §1.1291-1T(b)(8) published elsewhere in this issue of the **Federal Register**].

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(k) [The text of the proposed amendments to §1.1291-1(k) is the same as the text of §1.1291-1T(k) published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.1291-9 is amended by revising paragraph (j)(3) and adding paragraph (k)(3) as follows:

§1.1291-9 Deemed dividend election.

* * * * *

(j) * * *

(3) [Reserved]. For further guidance, see §1.1291-9T(j)(3).

(k) * * *

(3) [The text of the proposed amendments to §1.1291-9(k)(3) is the same as the text of §1.1291-9T(k)(3) published elsewhere in this issue of the **Federal Register**].

Par. 5. Section 1.1298-0 is amended by adding a listing of the paragraph headings for §1.1298-1 as follows:

§1.1298-0 Table of contents.

[The text of the proposed amendments to §1.1298-0 is the same as the text of §1.1298-0T published elsewhere in this issue of the **Federal Register**].

Par. 6. Section 1.1298-1 is added to read as follows:

§1.1298-1 Section 1298(f) annual reporting requirements for United States persons that are shareholders of a passive foreign investment company.

[The text of the proposed amendments to §1.1298-1 is the same as the text of §1.1298-1T(h) published elsewhere in this issue of the **Federal Register**].

Par. 7. Section 1.6038-2 is amended by revising paragraph (j)(3) to read as follows:

§1.6038-2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

* * * * *

(j) * * *

(3) [The text of the proposed amendments to §1.6038-2(j)(3) is the same as the text of §1.6038-2T(j)(3) published elsewhere in this issue of the **Federal Register**].

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Par. 8. Section 1.6046-1 is amended by revising paragraph (e)(5) to read as follows:

§1.6046-1 Returns as to organizations or reorganizations of foreign corporations and as to acquisitions of their stock.

* * * * *

(e) * * *

(5) [The text of the proposed amendments to §1.6046-1(e)(5) is the same as the text of §1.6046-1T(e)(5) published elsewhere in this issue of the **Federal Register**].

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John Dalrymple

Deputy Commissioner for Services and Enforcement.

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